

*In the Matter of Darrel Forte*  
DOP Docket No. 2005-863  
**(Merit System Board, decided February 9, 2005)**

Darrel Forte, a Truck Driver, Single Axle at Ancora Psychiatric Hospital, Department of Human Services, represented by Mark Caira, Esq., appeals the denial of sick leave injury (SLI) benefits.

The appellant alleged that he sustained work-related injuries to his lower back, right knee, and right shoulder on August 4, 2004 when, while loading a tractor onto a trailer, the trailer became disengaged from the truck. As a result, the appellant was thrown to the ground. The appellant was examined by a State-authorized physician, Dr. Minh Huynh, on August 5, 2004, and he was diagnosed with a right knee sprain, a right shoulder strain, and a lumbar strain and authorized out of work. In an MRI report dated August 5, 2004, it was noted that the appellant had mild degenerative joint disease in his right knee. In a report dated August 17, 2004, Dr. Huynh indicated that the appellant remained unable to work, but he noted that the appellant would receive no follow-up treatment for his injuries until his return from vacation on August 30, 2004. On August 30, 2004, the appellant returned to Dr. Huynh for treatment but requested that he be permitted to obtain a second opinion regarding his course of treatment. On September 9, 2004, the appellant was examined by Dr. Jeffrey Stern, an orthopedic specialist. In his report, Dr. Stern noted that the appellant underwent surgery to his right shoulder in 2002. Dr. Stern diagnosed the appellant's present injuries as a sprain/strain of his right knee, right shoulder and lumbosacral spine, and he authorized the appellant to return to work on light duty. It is noted that the appellant was out of work and received Workers' Compensation benefits from August 5, 2004 through August 17, 2004 and from August 28, 2004 through September 10, 2004.

The appointing authority denied the appellant SLI benefits based on *N.J.A.C.* 4A:6-1.6(c)2, which states that preexisting illnesses, diseases and conditions aggravated by a work-related accident or condition of employment are not compensable when such aggravation was reasonably foreseeable. In support of its denial, the appointing authority relied on documentation demonstrating that the appellant sustained a work-related injury to his right shoulder on April 2, 2002. According to an MRI report dated April 3, 2002, the appellant had degenerative changes in his right acromioclavicular joint. In addition, the appointing authority relies on Dr. Stern's September 9, 2004 report, indicating that the appellant previously underwent surgery on his right shoulder, and the August 5, 2004 MRI report, noting mild degenerative joint disease in his right knee.

On appeal to the Merit System Board, the appellant concedes that the instant injury constituted an aggravation of his prior shoulder injury. However, the appellant argues that the aggravation was not reasonably foreseeable. In this regard, the appellant reiterates that his injuries occurred when he was thrown into the air and to the ground when a trailer, on which he was loading equipment, became disengaged from a truck. He contends that his injuries were not caused by the "normal duties" associated with his

position, such as lifting, driving or bending. The appellant also asserts that he sustained new injuries in this accident to his lower back and right knee.

In response, the appointing authority asserts that the appellant previously underwent surgery to his right shoulder, had a history of lower back pain, and suffered from degenerative joint disease in his right knee. However, the appointing authority does not dispute the nature of the accident which caused the appellant's injuries.

## **CONCLUSION**

According to uniform SLI regulations, in order to be compensable, an injury or illness resulting in disability must be work related and the burden of proof to establish entitlement to SLI benefits by a preponderance of the evidence rests with the appellant. *See N.J.A.C. 4A:6-1.6(c) and N.J.A.C. 4A:6-1.7(h).* *N.J.A.C. 4A:6-1.6(c)2* provides that preexisting illnesses, diseases and conditions aggravated by a work-related accident or condition of employment are not compensable when such aggravation was reasonably foreseeable.

In the instant matter, the medical documentation in the record reflects that the appellant sustained work-related injuries to his lower back, right knee, and right shoulder on August 4, 2004. The appellant does not dispute that his right shoulder injury constituted an aggravation of a preexisting injury. The record also contains medical documentation that the appellant had a preexisting condition in his right knee, *i.e.*, mild degenerative joint disease.<sup>1</sup> However, despite the evidence that the appellant aggravated preexisting injuries, the Board finds that the instant injuries were not reasonably foreseeable. In this regard, the injuries occurred when the trailer, on which the appellant was loading a tractor, suddenly became disengaged from the truck. This caused the appellant to be thrown into the air and onto the ground. The appointing authority does not dispute the nature of the accident which caused the appellant's injuries. Although the appellant was performing his regular work duties when this accident occurred, the Board finds that the manner in which the accident occurred was outside the ordinary realm of the appellant's expected everyday work environment. *See e.g., In the Matter of Irene Day* (MSB, decided May 22, 2001) (Aggravation of preexisting injury was not reasonably foreseeable where aggravation was caused by a patient moving a chair in which the appellant was about to sit.) Accordingly, the appellant has shown by a preponderance of the evidence that the aggravation of his preexisting injuries was not reasonably foreseeable in this case. Thus, the appellant has established an entitlement to SLI benefits for the time period the record reflects he was disabled from work due to his injuries, *i.e.*, from August 5, 2004 through August 17, 2004 and from August 28, 2004 through September 10, 2004.

## **ORDER**

Therefore, it is ordered that this appeal be granted.

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<sup>1</sup> While the appointing authority also claims that the appellant had a history of lower back pain, there is no medical documentation in the record to support this statement.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.